

RECEIVED  
FEDERAL ELECTION  
COMMISSION

CLARK HILL

2016 JAN 12 AM 9:44

Charles R. Spies  
T 202.572.8663  
F 202.572.8663  
Email: cspies@clarkhill.com

OFFICE OF GENERAL

Clark Hill PLC  
601 Pennsylvania Avenue NW  
North Building, Suite 1000  
Washington, DC 20004  
T 202.772.0809  
F 202.772.0819

clarkhill.com

January 6, 2016

Jeff S. Jordan  
Assistant General Counsel  
Complaints Examination & Legal Administration  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463  
VIA FACSIMILE: (202) 219-3923

Re: MUR 6984: Right to Rise USA Response to Complaint

Dear Mr. Jordan:

We are writing this letter on behalf of Right to Rise USA ("RTR"), and Charles R. Spies, in his official capacity as Treasurer, in response to the Complaint filed in the above-referenced matter by the American Democracy Legal Fund ("ADLF"). The Complaint is just the latest edition in a long line of frivolous, politically-charged complaints filed by ADLF, a Hillary Clinton front-group run by her henchmen, David Brock and Brad Woodhouse. The Complaint offers nothing more than the same unsupported and hyperbolic allegations and innuendo that have riddled all of ADLF's complaints this election cycle—all against conservative and Republican organizations. It should be promptly dismissed.

The Federal Election Commission (the "Commission") may find "reason to believe" only if a Complaint sets forth sufficient specific facts, which, if proven true, would constitute a violation of the Federal Election Campaign Act (the "Act"). See 11 C.F.R. § 111.4(a), (d). Unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true. See MUR 4960, Commissioners Mason, Sandstrom, Smith and Thomas, Statement of Reasons (Dec. 21, 2001). Moreover, the Commission will dismiss a complaint when the allegations are refuted with sufficiently compelling evidence. See *id.*

The Complaint erroneously alleges that RTR engaged in coordinated communications with Jeb 2016, Inc. (the "Campaign"), the principal campaign committee for Jeb Bush, through the use of a common vendor. As purported evidence for this allegation, ADLF cites two RTR mail pieces that were produced by Redwave Communications, LLC ("Redwave"), a consulting firm based in Des Moines, Iowa. ADLF infers that the mail pieces were coordinated with the

1004464440001

January 6, 2016

Page 2

Campaign, and resulted in prohibited in-kind contributions to the Campaign, because of the Campaign's payments to David Kochel and Albrecht Public Relations, LLC, both of whom have links to Redwave. Such bogus speculation is both factually and legally deficient on its face.

As an initial matter, it should be noted that Redwave is not a common vendor of RTR and the Campaign. Since the Campaign registered with the Commission in June 2015, it has not listed a single disbursement to Redwave on its quarterly reports. Instead of acknowledging this fact, ADLF fabricates a coordination theory based on their misconceived notions of the connections of two individuals to Redwave.

First, ADLF cites the Campaign's payments to David Kochel for "strategy consulting" and Mr. Kochel's ownership of Redwave as evidence that a common vendor existed between the Campaign and RTR. In reality, Mr. Kochel is an employee of the Campaign and has been since the Campaign first registered with the Commission. In fact, he took a leave of absence from Redwave prior to Mr. Bush's becoming a candidate. Mr. Kochel has not provided consulting services for Redwave or its clients since taking his leave of absence, and he has certainly not relayed any of the Campaign's plans, projects, activities, or needs to any Redwave employee or consultant doing work for RTR. Any claim to the contrary by ADLF is a mere fabrication.

ADLF attempts to apply a similar specious legal theory to the Campaign's payments to Albrecht Public Relations, LLC ("APR"), a public relations firm owned by Tim Albrecht. Without providing further evidence, ADLF cites Mr. Albrecht's additional role as an employee of Redwave as purported proof that the Campaign was coordinating with RTR. ADLF bases these conclusions on pure speculation. In reality, Mr. Albrecht has only provided consulting services to the Campaign through his own firm, and, like Mr. Kochel, he has never communicated any of the Campaign's plans, projects, activities, or needs to any Redwave employee or consultant doing work for RTR.

Even if Mr. Kochel and Mr. Albrecht were deemed to be common vendors by virtue of their extraneous links to Redwave, which they should not be, Redwave has a strict firewall in place to prevent the flow of information about its campaign and political party clients' plans, projects, activities, or needs to any of its third party clients, such as Super PACs, that could be material to the creation, production or distribution of any third party communications. The coordination conduct standards in 11 C.F.R. § 109.21(d) "are not met if the commercial vendor...has established and implemented a firewall" meeting certain requirements. *Id.* § 109.21(h); see MUR 5506 (EMILY's List), First General Counsel's Report at 5-8. The firewall must be designed and implemented to prohibit the flow of information between those providing services for the sponsor, and those who have provided services to the affected candidate. *See id.* § 109.21(h)(1). It must also be described in a written policy that is distributed to all relevant, affected employees and consultants. *See id.* § 109.21(h)(2).

CLARK HILL

10047494820

January 6, 2016

Page 3

Redwave's firewall policy meets the foregoing criteria, and rebuts any speculative allegations of coordination between the Campaign and RTR. Moreover, RTR's independent contractor agreement with Redwave explicitly requires that Redwave have a firewall policy in place to ensure that services provided to RTR are not coordinated with any candidate, candidate's committee, or political party committee.

The Commission adopted this firewall "safe harbor... as a way for organizations to respond to speculative complaints alleging coordination when organizations are faced with trying to 'prove a negative' by showing that coordination did not occur." *Coordinated Communications*, 71 Fed. Reg. 33,190, 33,206 (2006). When a firewall exists, only "specific information" showing the flow of material information about a candidate's plans, projects, activities or needs to the sponsor is sufficient to defeat the presumption that the conduct standard has not been met. *See id.* § 109.21(h). ADLF provides no "specific information" to show the flow of material information about the Campaign's plans, projects, activities or needs to RTR. *See* 11 C.F.R. § 109.21(h). Rather, it relies on just the sort of "speculation" from which the safe harbor was designed to protect organizations. 71 Fed. Reg. at 33,206.

Furthermore, the Commission has determined that the "mere presence of a common vendor" does not "presume coordination." 68 Fed. Reg. 436-437 (Jan. 3, 2003). In fact, the Commission has clearly stated that the regulations should not be interpreted as any sort of "prohibition" on the use of common vendors. *Id.* at 437. The Commission has explained that "even those vendors who provide one or more of the specified services are not in any way prohibited from providing services to both candidates or political party committees and third-party spenders." *Id.* The Commission clarified that the common vendor regulation focuses on the "sharing of information about plans, projects, activities, or needs of a candidate or political party through a common vendor to the spender who pays for a communication that could not then be considered to be made 'totally independently' from the candidate." *Id.* Redwave's work for RTR in producing the cited mail pieces was done "totally independently" from the Campaign, thus Redwave, Mr. Kochel, and APR do not qualify as "common vendors" under 11 C.F.R. § 109.21(d)(4)(iii).

In presenting politically-motivated and factually and legally unsubstantiated arguments, ADLF has failed to demonstrate that RTR has violated any provision of the Act or the Commission's regulations. Instead, ADLF has yet again invoked an administrative process as a means to continue its assault on its political opponents. The Complaint is based on malicious speculation and innuendo. We therefore respectfully request that the Commission recognize the legal and factual insufficiency of the Complaint on its face and immediately dismiss it.

CLARK HILL

19044464821

January 6, 2016

Page 4

Thank you for your prompt consideration of this matter, and please do not hesitate to contact me directly at (202) 572-8663 with any questions.

Respectfully submitted,



Charles R. Spies  
James E. Tyrrell III  
*Counsel to Right to Rise USA*

CLARK HILL

10044464822